Supreme Court, U. S.
FILED
DEC 18 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-970

ROBERT JOSEPH LLINAS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

LARRY G. TURNER
Turner & Morris, P.A.
Suite 6
204 West University
Post Office Box 508
Gainesville, Florida 32602
(904) 375-4460

Attorney for Petitioner

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

TABLE OF CONTENTS

Page

STATEMENT OF JURISDICTION 2

ISSUES PRESENTED 2

STATUTES 3

FACTS 4

REASONS FOR GRANTING THE WRIT:

ISSUE I 7

ISSUE II 13

ISSUE III 15

ISSUE IV 17

TABLE OF AUTHORITIES

Cases:

Albertson v. Subversive Activities Control Board, 382 U.S. 70 (1965) 9

Boyd v. United States, 116 U.S. 616 (1886) 12

Brooks v. Tennessee, 406 U.S. 609 (1922) 11

Cape v. United States, 283 F.2d 430 (9th Cir. 1960) 19

Gardener v. Broderick, 392 U.S. 273 (1968) 11

Garrity v. New Jersey, 385 U.S. 492 (1967) 11

Griffin v. California, 380 U.S. 609 (1965) 11

Grosso v. United States, 390 U.S. 62 (1968) 9

Ingram v. United States, 360 U.S. 672 (1959) 8

Lefkowitz v. Turley, 414 U.S. 427 (1963) 11

Lopez v. United States, 373 U.S. 427 (1963) 14

People v. Stephens, 117 Cal. App. 2d 653, 256 P.2d 1033 19

Marchetti v. United States, 390 U.S. 39 (1968) 9

Murphy v. Waterfront Commission of New York, 378 U.S. 52 (1964) 12

Sanitation Men v. Sanitation Commission, 392 U.S. 280 (1968) 11
Sherman v. United States, 356 U.S. 369 (1958) 14
Spevak v. Klein, 385 U.S. 511 (1967) 11
Ullman v. United States, 350 U.S. 422 (1956) 13
United States v. Biggins, 551 F.2d 64 (5th Cir. 1977) 9,15
United States v. Bryant, 480 F.2d 785 (2nd Cir. 1973) 18
United States v. Burr, (In re Willie) 25 Fed. Cas. 38, 40 (no. 14,692e) (CCD Va. 1807) 9
United States v. Covington, 395 U.S. 57 (1969) 9
United States v. Frazier, 479 F.2d 983 (2nd Cir. 1973) 13
United States v. Jackson, 390 U.S. 570 (1968) 8,10
United States v. Llinas, 603 F.2d 506 (5th Cir. 1979) 8
United States v. McKeever, 169 F. Supp. 426 (S.D.N.Y. 1958) 15
United States v. McMillan, 508 F.2d 101 (8th Cir. 1976) 18
United States v. Onori, 535 F.2d 938 (5th Cir. 1976) 17
United States v. Rogers, 504 F.2d 1079 (5th Cir. 1974) 9
United States v. Wiley, 517 F.2d 1212 (D.C. Cir. 1975) 10,11
Wright v. State, 79 So.2d 66 (Al. App. 1954) 13,19

U.S. Codes:

21 USC §963 2,8
21 USC §846 8

28 USC §2106 11

Constitution:

United States Constitution, Fifth Amendment 11

APPENDIX

Fifth Circuit Judgment and Order Denying Rehearing 1a
Fifth Circuit Judgment and Commitment Order 1b
Government's Translation 1c
Government's Translation 1d
Government's Translation 1e

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No.

ROBERT JOSEPH LLINAS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, ROBERT JOSEPH LLINAS, respectfully prays that this Honorable Court issue a WRIT OF CERTIORARI to review the judgment of the United States Court of Appeals, Fifth Circuit, entered on 26 September 1979, Rehearing denied 19 October 1979. (Said Judgment and Order are incorporated as Appendix "A").

The United States District Court for the Southern

District of Florida entered a Judgment on 15 September 1978 convicting Petitioner of conspiring to import and with conspiring to possess with intent to distribute cocaine, a Schedule II controlled substance, in violation of 21 U.S.C., Sections 963 and 964 as charged in COUNTS I and II of the INDICTMENT, and sentenced Petitioner to a term of forty (40) months on each COUNT with the sentences to run concurrently. (Said Judgment and Committment Order is incorporated as Appendix "B").

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under Title 28, Section 1254(1), U.S.C., and Rule 19, Supreme Court Rules.

ISSUES PRESENTED

1. The Fifth Circuit's decision, that even if the Government's English translation of a Spanish conversation is inaccurate, Petitioner is barred from raising objection on appeal for failure to present another translation to the jury at trial, imposes an unnecessary and impermissible burden on petitioner's constitutional right to remain silent at trial.

2. The Government committed serious errors which greatly strengthened its case against the accused and an affirmance of the lower court's decision will encourage future commission of such case strengthening errors.

3. The trial court abused its discretion by admitting

into evidence the Government's contested Spanish-to-English translation because the Government failed to lay the foundation for the admissibility of the tape recordings from which the translations were made.

4. The trial court abused its discretion by admitting into evidence the Government's contested Spanish-to-English translation because the translation and not the tape had to and did effectively become the primary evidence for English speaking jurors who could not understand the Spanish language recording.

STATUTES

846. Attempt and conspiracy. Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

963. Attempt and conspiracy. Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

2106. Determination. The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances. June 25, 1948, c. 646, 62 Stat. 963.

FACTS

A package from Colombia, South America, addressed to Cesar Riascos and sent to the Miami International Airport was ready for pickup on 3 November 1977 (R. Vol. III, p. 368). It contained framed decoupage pictures. When DEA agents pried one of these frames open they found cocaine (R. Vol. II, p. 46). On 3 November 1977, when Cesar Riascos and a companion went to Miami International Airport to claim this package, six to seven DEA agents descended upon them with drawn guns.

Cesar Riascos, on his first trip to the United States from Colombia, South America, was no doubt terrified by the posse of armed agents who closed in around him from all directions, with weapons drawn and pointed. "We covered a lot of ground, guns drawn, and placed them under arrest" Agent Martinez testified (Supp. R. Vol. I, p. 18). Riascos and his companion were arrested, handcuffed, and then removed for interrogation where they were separated. At some point Riascos agreed to cooperate with the DEA agents.

Between the time of arrest and Riascos' agreement to cooperate, Riascos and his companion had not been allowed to speak with one another, had not spoken with a lawyer or friends, and had not been taken before a Magistrate (R. Vol. II, p. 76). To do any of these things would have lessened the apprehension of the foreigners and made them less susceptible to coercion. Speaking with a lawyer or seeing a Magistrate would have shown Riascos and his companion Saenz that the armed strangers detaining them were accountable to higher authority. This was never done.

Riascos was arrested on the 3rd of November 1977. He was taken from the airport and interrogated. After interrogation in Miami, he was taken by car in handcuffs through the night for seven or eight hours on a three hundred and fifty (350) mile journey from Miami to Gainesville during which he was unable to sleep (R. Vol. III, p. 371).

When he arrived in Gainesville at approximately 9:00 AM of the 4th of November, he still had not been taken before a Magistrate (R. Vol. III, p. 371). He was detained in a hotel room for three (3) more hours while agents placed electronic surveillance devices which would later be used to ensnare his cousin, the Petitioner, Robert Llinas. Then he was instructed to call his cousin Llinas and to ask him to bring $3,000.00 (R. Vol. II, p. 161). Llinas was surprised to hear Riascos on the phone in Gainesville but agreed to obtain the money.

The agents brought recording devices with them from Miami. Although they had at least fifteen (15) hours in which to get a warrant for the electronic surveillance between the time of Riascos' alleged agreement to cooperate in Miami and the subsequent taping of the conversation in Gainesville, they failed to seek such a Warrant (Supp. R. Vol. I, p. 61).

Riascos was then returned to Miami on 5 November. The agents held Riascos captive from the 3rd through the 5th. In all that time the DEA agents never took Riascos before a Magistrate. They covered the length of Florida from Miami to Gainesville and back. Surely there were Magistrates available in the areas passed through, as well as in Gainesville.

This irregularity is compounded by the unaccoutable

and illogical disparity in the bonds which were set for Llinas and Riascos.

Llinas, a family man with property and relatives in Florida and a legitimate import-export business, was put on a $500,000.00 bond, later reduced. A mere $10,000.00 bond was set for Riascos, a citizen of Colombia with no ties to the United States. To set his bond so low considering the gravity of the charges against him and his absence of ties to the United States was either an inexcusable error or a deliberate invitation for him to abscond. Riascos did abscond, leaving the defense unable to question the alleged voluntariness of his consent to surveillance or to call him as a witness.

The suspicious nature of the actions of these DEA agents does not end here. Although two tape recorders were connected, one to a wall microphone and another to a body transmitter, only one incomplete tape was produced in discovery. According to the DEA agents, the equipment used with the body transmitter malfunctioned resulting in a blank tape (R. Vol. III, p. 374). Curiously, this "blank tape" was destroyed by the DEA without ever affording Petitioner an opportunity to review it.

The surviving tape, made through the wall microphone, contained approximately sixteen (16) minutes of a Spanish conversation (R. Vol. III, pp. 411-413). The original conversation, however, lasted roughly thirty (30) minutes. Unfortunately, as can be seen by the Government's translation (Appendices C, D, E), this incomplete recording begins in mid-conversation. The remainder is badly flawed and contains numerous sections which are inaudible or audible but unintelligible. Many of the portions which were both audible

and intelligible cannot be definitively linked with a particular speaker. The tape is therefore wholly unreliable.

The Government employed two (2) different translators who made two (2) substantially different translations of the conversation. The translators disagreed as to the content of the conversations. In fact, the prosecution's translators even disagreed on who was saying what.

The Government prosecutor has said of this tape, "Your Honor, my case is that one tape" (Supp. R. Vol. II, p. 23). The Government introduced a contested transcript of the translation at trial as well as the original Spanish conversation. Since the jurors were not bilingual, the translation was used as primary evidence rather than solely to aid the jurors in their understanding of the tape as the decisional law of the Fifth Circuit requires.

REASONS FOR GRANTING THE WRIT

Issue I

The Fifth Circuit's decision, that even if the Government's English translation of a Spanish conversation is inaccurate, Petitioner is barred from raising objection on appeal for failure to present another translation to the jury at trial, imposes an unnecessary and impermissible burden on petitioner's constitutional right to remain silent at trial.

Petitioner was convicted of conspiracy to import cocaine and conspiracy to possess cocaine with intent

to distribute, in violation of 21 U.S.C. §§963, 846. The backbone of the Government's case consisted of tape recordings of a conversation in Spanish between Petitioner and Cesar Riascos, a native of Colombia. The Government's English transcription of this Spanish conversation was received by the Court and published to the jury despite objections regarding inaudibility of the underlying tape and inaccuracy of the Government translation. The Fifth Circuit affirmed the conviction and ruled, as a matter of law, that even if the Government's translation is inaccurate, Petitioner is barred from raising objection on appeal because he failed to present another translation to the jury. See *United States v. Llinas,* 603 F.2d 506 (5th Cir. 1979) at 509:

> "If the Government's translation is inaccurate, it was Petitioner's burden to challenge its accuracy by presenting another translation, so that the jury could choose which version to believe."

Petitioner submits that this Fifth Circuit ruling imposes an unnecessary and impermissible burden on his right to remain silent at trial. *United States v. Jackson,* 390 U.S. 570, 583 (1968).

The ruling provokes defendants in like circumstances to tender information that is naturally and necessarily self-incriminatory without any coextensive grant of immunity. Any successful conspiracy conviction which rests entirely on the taping of one conversation, as does the case at bar, necessitates that the proponent of the translation show an agreement in the furtherance of an unlawful objective in addition to the element of scienter for the substantive offense underlying the conspiracy count. *Ingram v. United States,* 360 U.S.

672 (1959). The Fifth Circuit test for admissibility of a transcript requires that the proponent show, among other things, the identity of relevant speakers in the conspiratorial conversation.[1] *United States v. Biggins,* 551 F.2d 64 (5th Cir. 1977). If the Government's translation is inaccurate, the defendant is required by the *Llinas* decision to correct the deficiencies and fill in the gaps in order to preserve objections on appeal.

The Supreme Court has repeatedly invalidated provisions that attempt to coerce, subtly or otherwise, an accused to provide information of a testimonial or communicative nature that tends to identify him with criminal activity. *Albertson v. Subversive Activities Control Board,* 382 U.S. 70 (1965); *Marchetti v. United States,* 390 U.S. 39 (1968); *Grosso v. United States,* 390 U.S. 62 (1968); *United States v. Covington,* 395 U.S. 57 (1969). Moreover, it is axiomatic that disclosure of any fact that provides a link in the evidence against the accused may not be compelled. As articulated by Chief Justice Marshall in the famous proceedings against Arron Burr, *United States v. Burr* (In re Willie), 25 Fed. Cas. 38, 40 (No. 14,6923) (CCD Va. 1807):

> Many links frequently compose that chain of testimony which is necessary to convict any individual of a crime. It appears to the court to be the true sense of the rule that no witness is compellable to furnish any one of them against

[1] The fact that the defendant's translation may only identify "relevant speakers" other than himself does not dispel the self-incriminatory nature of the information. The Fifth Circuit has held that there was no distinction between confessing guilt and possibly implicating ones own self by implicating others. *U.S. v. Rogers,* 504 F.2d 1079 (5th Cir. 1974).

himself. It is certainly not only a possible but a probable case that a witness, by disclosing a single fact, may complete the testimony against himself, and to every effectual purpose accuse himself as entirely as he would by stating every circumstance which would be required for his conviction.

The inevitable effect of the Fifth Circuit's decision in the instant case is to discourage assertion of the Fifth Amendment right to remain silent. That this may be only an indirect and inadvertent result of what might otherwise be termed an ameliorative procedure for contesting the accuracy of evidence is unimportant. Whatever the objectives of the court, they cannot be pursued by means that needlessly chill the exercise of a basic constitutional right. *United States v. Jackson*, 390 U.S. 570, 582 (1968). The Supreme Court, in *Jackson*, stated:

> A procedure need not be inherently coercive in order that it be held to impose an impermissible burden upon the assertion of a constitutional right.
>
> The evil is not that the ruling necessarily coerces a waiver of the right to remain silent but simply that it needlessly encourages it. As the *Jackson* court observed, "The question is whether that effect is unnecessary and therefore excessive."

Additionally, when a trial court denies a motion for a judgment of acquittal, "the accused is entitled to have the sufficiency of the Government's case-in-chief reviewed on appeal." *United States v. Wiley*, 517 F.2d 1212, 1218 (D.C. Cir. 1975).

> In addition to constitutional commands, the federal appellate courts are governed in their decision making by the statutory directive of 28 U.S.C. §2106 that they shall dispose of appeals in the interest of justice. This permits and indeed counsels protection of sound and substantial interests of the accused even when they do not rise to the level of constitutional protections. *U.S. v. Wiley*, supra at 1218.

By maintaining his silence after objecting to the inaccuracy of the Government's evidence, Petitioner, in the case sub judice, was deemed to have forfeited any opportunity for appellate review. Hence, he was penalized for remaining mute in the face of inaccurate evidence. The High Court, in a similar situation in *Spevak v. Klein*, 385 U.S. 511, 515 (1967), pointed out:

> . . . 'penalty' is not restricted to fine or imprisonment. It means, as we said in *Griffin v. California*, 380 U.S. 609 (1965), the position of *any sanction which makes the assertion of the Fifth Amendment privelage 'costly'*." (Emphasis added)

The Court has, on numerous occasions, found similar sanctions penalizing, and thus impermissibly burdening, the right to remain silent.[2]

[2] *Garrity v. New Jersey*, 385 U.S. 493 (1967) ("There are rights of a Constitutional stature whose exercise a state may not condition by the exaction of a price", to wit: loss of a job). *Brooks v. Tennessee*, 406 U.S. 609, 610-611 (1972) (The accused lost his privilege to testify under the challenged rule of procedure. The Supreme Court rejected the procedure because it "exacts a price for his silence by keeping him off the stand entirely unless he chooses to testify first." The Court clarified, "This, we think, casts a heavy burden on defendant's otherwise unconditional right not to take the stand. The rule, in other words, 'cuts down the privilege [to remain silent] by making its assertion costly." *Spevak v. Klein*, 385 U.S. 511 (1967) (penalty of disbarment). *Lefkowitz v. Turley*, 414 U.S. 70 (1973) (cancellation of contracts). *Gardener v. Broderick*, 392 U.S. 273 (1968) (loss of employment). *Sanitation Men v. Sanitation Comm'n*, 392 U.S. 280 (1968) (loss of job).

Furthermore, affixing a penalty of this nature to the nondisclosure of evidence by the accused has been construed as tantmount to compelling its production. See e.g. *Boyd v. United States,* 116 U.S. 616 (1886).[3]

The Fifth Circuit decision contradicts the protective policies of the Fifth Amendment. Even if the petitioner were patently guilty, it would not be his responsibility to aid the Government's case. If the Government's evidence is inaccurate and insufficient, petitioner is faced with the "cruel trilemma" of self-incrimination, perjury, or forfeiture of appellate review. Similar Fifth Amendment problems were delineated by the Supreme Court in *Murphy v. Waterfront Commissioner of New York,* 378 U.S. 52, 55-56 (1964):

> It reflects many of our fundamental values and most noble aspirations; our unwillingness to subject those suspected of crime to the cruel trilemma of self-accursation, perjury or contempt; our preference for an accusatorial rather than an inquisitorial system of criminal justice; our fear that self-incriminating statements will be elicited by inhumane treatment and abuses; our sense of fair play which dictates "a fair state-individual balance by requiring the government in its contest with the individual to shoulder the entire load, " * * * and our realization that the privilege while 'sometimes a shelter to the guilty,' is often "a protection to the innocent."

The privilege against self-incrimination is "one of the great landmarks in man's struggle to make himself

[3]Whereas *Boyd* involved a federal statute which made the nonproduction of documentary evidence a confession, the practical effect is the same when objections to inaccurate evidence are lost for failure to produce documented corrections.

civilized" and is not to be interpreted in a "hostile or niggardly spirit". *Ullman v. United States,* 350 U.S. 422, 426 (1956).

Contrary to this well-settled body of law, the instant decision of the Fifth Circuit creates an unconstitutional and subtly coercive method of preserving objections to inaccurate evidence. The very essence of the Fifth Amendment is offended by this recently-created appellate procedure.

Issue II

The Government committed serious errors which greatly strengthened its case against the accused and an affirmance of the lower court's decision will encourage future commission of such case strengthening errors.

The Second Circuit recognizes that there is a danger when a recording is substantially unintelligible, as in the case sub judice, and that the part which can be heard or understood will mislead the jurors as to the entire conversation. *United States v. Frazier* 479 F.2d 983, 985 (2nd Cir. 1973).

Also an unscrupulous surveillance agent can shut out or blur unwanted parts of a conversation by use of volume control and resume accurate recording at a time when the conversation is again incriminatory, or perhaps by being out of context, only seems to be incriminatory. *Wright v. State* 79 So.2d 66, 72 (Al. App. 1954).

Use of such tapes can mislead the jury and may encourage police officers to tamper with recording instruments and evidence.

Chief Justice Warren, concurring in *Lopez v. United States* 373 U.S. 427, 445 fn.2 (1963) said of *Sherman v. United States* 356 U.S. 369, 371-75 (1958) where the accused successfully pleaded the defense of entrapment: "Had the Government been able to limit its case in *Sherman* to recordings of the final meetings between the informer and the petitioner wherein the illegal sales were consumated, the record would never have revealed the long series of meetings inducing the petitioner to make these sales."

Similarly, Petitioner Llinas maintains that if the first half of the tape which constituted the sole evidence against him had not been lost, whether by intent or inadvertance, his innocence of the charges of which he stands convicted could be established.

The DEA also destroyed a second tape which was made at the time of surveillance without first providing an opportunity for Petitioner to review that tape. It was said to be "blank." Nothing can justify or undo the Government's destruction of that tape.

More shocking, however, is the enormous and illogical disparity between the bonds on which Llinas and Riascos were released. Petitioner Llinas, a U.S. citizen with family, business and property ties to Florida was put on a $500,000.00 bond initially whereas Riascos, a Colombian citizen, with no ties to this country was placed on a $10,000.00 bond. It strains credulity to suggest that this fact situation depicts something other than Government set-up inviting Riascos to flee the country as a means of protecting the Government's interpretation of the conversation from attack. Riascos' absence also makes impossible any meaningful attack on the voluntariness of his alleged consent to this poorly

taped conversation which is the Government's sole evidence against Petitioner.

Issue III

The trial court abused its discretion by admitting into evidence the Government's contested Spanish-to-English translation because the Government failed to lay the foundation for the admissibility of the tape recordings from which the translations were made.

The Fifth Circuit has said that the party introducing tapes has the burden of going forward with foundation evidence to show that the tapes are accurate representatives of sounds previously auditied by a witness. *United States v. Biggins* F.2d 66 (5th Cir. 1977).

Biggins refers to the often cited seven point test of *United States v. McKeever*[4] but neither adopts nor rejects that test as a whole. *Biggins* instead holds that in

[4] *United States v. McKeever* 169 F. Supp. 426 (S.D.N.Y. 1958). A review of the authorities leads to the conclusion that, before a sound recording is admitted into evidence, a foundation must be established by showing the following facts:

1) That the recording device was capable of taping the conversation now offered in evidence.
2) That the operator of the device was competent to operate the device.
3) That the recording is authentic and correct.
4) That changes, additions or deletions have not been made in the recording.
5) That the recording has been preserved in a manner that is shown to the court.
6) That the speakers are identified.
7) That the conversation elicited was made voluntarily and in good faith without any kind of inducement.

criminal trials the prosecution must go forward and show first, "the competency of the operator" second, "the fidelity of the recording equipment" third, "the absence of material deletions, additions or alterations in the relevant portions of the recording", and fourth, "the identification of the relevant speakers." (@66)

The four point *Biggins* test was not satisfied at the trial of Petitioner Llinas. Firstly, though the operator may generally have been competent, he did not provide a satisfactory or complete tape of the conversation.

Secondly, though the recording equipment used may generally possess the necessary "fidelity," the Government admits that its equipment had not functioned properly on this occasion.

Thirdly, the government cannot show the absence of material deletions, additions, or alterations in the relevant portions of the recording because Riascos who allegedly consented to the electronic surveillance has absconded and the tape operator claims either not to have heard or not to have remembered the missing first half of the conversation he intercepted.

Fourthly, the Government's own translators dispute the identity of the voices which they translated. Thus none of the four predicates required under *Biggins* has been established and it was therefore error for the trial court to rule the tape or any transcript therefrom admissible.

Further, the Fifth Circuit in its partial adoption of the McKeever test has failed to incorporate *McKeever's* seventh requirement: "(7) That the conversation elicited was made voluntarily and in good faith without any kind of inducement."

Under our system of justice, the Government cannot

coerce or induce an accused to provide the evidence it uses against him or his codefendants. Because the Government never took Riascos before a magistrate and because it induced him to abscond, whether by intent or inadvertance, the Government is now unable to demonstrate compliance with the seventh point in the *McKeever* test of admissibility.

Instead of being properly arraigned and jailed Riascos was kept in an irregular condition of prolonged armed confinement much of which time he was handcuffed. This surely was a form of coercion not to be tolerated under *McKeever.* And Riascos' bail was set so low after he cooperated with the DEA as to constitute the impermissible inducement forbidden by *McKeever.*

Admission of a tape so obviously the product of inducement and coercion was an abuse of discretion which must not be countenanced by this Court.

Issue IV

The trial court abused its discretion by admitting into evidence the Government's contested Spanish-to-English translation because the translation and not the tape had to and did effectively become the primary evidence for English speaking jurors who could not understand the Spanish language recording.

It is well established that transcripts from tape recordings are to be used only for the *limited purpose* of aiding the jury in its evaluation of the tapes. In *United States v. Onori* 535 F.2d 938, 946 (5th Cir. 1976) the judge cautioned the jury that "the tapes themselves are the primary evidence of what was or was

not recorded. The transcript will be furnished to you only for your convenience in being able to follow these conversations . . ." These or similar instructions are given in the Eighth Circuit, *United States v. McMillan* 508 F.2d 101, 105 (8th Cir. 1975) and in the Second Circuit, *United States v. Bryant* 480 F.2d 785, 790 (2nd Cir. 1973).

This instruction could not be followed in the case at bar because the jurors were not able to understand the Spanish language spoken on the tape.

The *Llinas* court attempts to circumvent this requirement by saying it is unnecessary for the jury to understand the language spoken on a tape. "Otherwise, persons would be free to engage in conspiracies in this country without fear that the government could show direct evidence of the conspiracy, as long as the conspirators addressed each other in a foreign language." (@509). The court's analysis misrepresents the difficulties which adherence to *Onori* would entail.

Following *Onori* will make the prosecution's task more difficult when conspirators speak a foreign language. But many procedural safeguards are inconvenient for the prosecution (e.g.: the Fourth Amendment) and are not therefore held to be dispensible. If the tape operator heard and remembered the conversation he could testify as to its nature and contents and this would be direct evidence. If Cesar Riascos had not been allowed, or perhaps even encouraged, to leave the country he too would be able to supply the direct evidence the *Llinas* court requires. But the tape operator failed in his task. The Government let its star witness abscond.

The rules of evidence ought not to be abandoned by the court so as to support the prosecution's case merely because it is weak.

In *Cape v. United States* 283 F.2d 430, 435 (9th Cir. 1960) the Ninth Circuit citing *People v. Stephens* 1953, 117 Cal. App. 2d 653, 256 P.2d 1033 said, "the court reversed a judgment of conviction because the *only* independent evidence of the purported conversation was the recording and it was so defective that the portions which could be heard by the jurors were subject to different versions and varying interpretations."

Here the Government's own translators differed as to what was said and by whom.

If the jury had been bilingual, they too would certainly have had similar difficulty in understanding the tape.

As the Alabama Court of Appeals has said in *Wright v. State* 79 So.2d 66 (Al. App. 1954), "If the recording is inaudible in those portions likely to contain statements material to the issues, the recording should be rejected if it is the only evidence offered as to the statement."

In this case the first half of the tape is missing. The remainder is badly flawed and contains numerous sections which are inaudible or audible but unintelligible. Many of the portions which were both audible and intelligible cannot be definitively linked to a particular speaker.

A tape of this deplorable quality when offered as the sole evidence against an accused must necessarily mislead the jury and ought therefore to be ruled inadmissible as a matter of law.

Respectfully submitted,

LARRY G. TURNER
Turner & Morris, P.A.
Suite 6
204 West University
Post Office Box 508
Gainesville, Florida 32602
(904) 375-4460

Attorney for Appellant

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 79-5095

U.S. COURT OF APPEALS
FILED
OCT 19 1979
ROBERT F. GANUCHEAU
CLERK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT JOSEPH LLINAS,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Florida

---

ON PETITION FOR REHEARING

(October 19, 1979)

Before AINSWORTH, GODBOLD and VANCE, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby Denied

ENTERED FOR THE COURT:

Robert A. Ainsworth
United States Circuit Judge

Form 703-2

RECEIVED OCT 22 1979

RECEIVED 22 1979

United States Court of Appeals
FIFTH CIRCUIT

Gilbert F. Ganucheau
Clerk

OFFICE OF THE CLERK
October 19 1979

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA. 70130

TO ALL PARTIES LISTED BELOW:

NO. 79-5095 - U.S.A. v. ROBERT JOSEPH LLINAS

Dear Counsel:

The enclosed order has this day been entered on petition( ) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

By Sally Hayward
Deputy Clerk

cc: Mr. Larry G. Turner
Mr. Alan L. Weisberg

APPENDIX B

UNITED STATES of America, Appelec,
v.
Robert Joseph LLINAS, Appellant.
No. 79-5095
Summary Calendar.*

United States Court of Appeals,
Fifth Circuit.

Sept. 26, 1979.

Defendant was convicted in the United States District Court for the Southern District of Florida, William M. Hoeveler, J., of conspiracy to import cocaine and to possess cocaine with intent to distribute. Defendant appealed. The Court of Appeals, Ainsworth, Circuit Judge, held that: (1) there was sufficient evidence to support the district court's conclusion that a coconspirator consented to the interception of his conversations with defandant, and (2) if the Government's translation of the tape from Spanish into English was accurate, it was defendant's burden to challenge its accuracy by presenting another translation to the jury and his failure to do so barred him from raising that issue on appeal.

Affirmed.

1. Telecommunications 495

In prosecution for conspiracy to import and possess cocaine with intent to distribute, there was sufficient evidence to support district court's finding that coconspirator consented to interception of his conversations

with defendant, notwithstanding contention that inherently coercive nature of arrest and interrogation of coconspirator, when combined with fact that coconspirator was alien unaccustomed to United States legal system, established lack of consent.

2. Criminal Law 1158(4)

Court of Appeals must accept trial court's findings of fact on motion to suppress unless they are clearly erroneous.

3. Criminal Law 438.1

Tape recordings which are only partialy unintelligible are admissible unless those portions are so substantial as to render the recording as a whole untrustworthy and determination as to trustworthiness of tape recording is left to sound discretion of trial judge.

4. Criminal Law 438.1

In prosecution for conspiracy to import and possess cocaine with intent to distribute, review of tape recording of conspiratorial conversation established that it was not so unintelligible as to be inadmissible.

5. Criminal Law 1036.4

If Government's translation of tape recorded conspiratorial conversation from Spanish into English was inaccurate, it was defendant's burden to challenge its accuracy by presenting another translation to jury and his failure to do so barred him from raising on appeal issue of inaccurate translation.

Larry G. Turner, Gainsville, Fla., for appelant.

Jack V. Eskenazi, U.S. Atty., Alan L. Weisberg, Linda Collins Hertz, Asst. U.S. Attys., Miami, Fla, for appellee.

Appeal from the United States District Court for the Southern District of Florida.

Before AINSWORTH, GODBOLD and VANCE, Circuit Judges.

AINSWORTH, Circuit Judge:

Appellant Robert Joseph Llinas was convicted after a jury trial of conspiracy to import cocaine into the United States and conspiracy to possess cocaine with intent to distribute it in violation of 21 U.S.C. §§963, 846. At trial, the principal incriminating evidence against appellant consisted of two tape recordings of conversations between appellant and Cesar Riascos-Velasquez, a native of Colombia. Llinas contends the recordings should have been excluded from evidence (1) because they were made without the valid consent of Riascos, and (2) because they contain inaudible portions rendering them fatally unreliable.

Appelant's claims of error are without merit and we affirm.

I.

[1] Llinas first contends that his incriminating taped conversations with Riascos should be excluded from evidence as Riascos did not voluntarily consent to the recording. 18 U.S.C. §2511(2)(c) provides that wire or oral communications may be intercepted without a

warrant where "one of the parties to the communication has given prior consent to such interception." The tape was properly admitted into evidence, therefore, if Riascos consented to the surveillance and recording of the conversation.

Evidence introduced at trial established that Riascos was arrested at the Miami International Airport by Federal Drug Enforcement Administration (DEA) agents after he claimed a package which customs officials had determined contained a large quantity of cocaine. Immediately after his arrest, Riascos was given *Miranda*[1] warnings in both Spanish and English. He did not request the presence of an attorney.

Riascos was advised by DEA agents that any cooperation by him with government investigators would be made known to the U.S. Attorney and the courts. Immediately thereafter, Riascos explained his and Llinas' involvement in the cocaine conspiracy. Riascos waived in writing his right to be promptly brought before a U.S. magistrate, and agreed to make a controlled delivery of the cocaine to Llinas in Gainesville, Florida.

Riascos was taken by car to Gainsville, where he telephoned Llinas from his hotel room. Llinas arrived sometime later, and was arrested as he left the hotel carrying a quantity of cocaine. The telephone and hotel room conversations, recorded by DEA agents, constitute the principal evidence against Llinas.

Llinas, both in a pretrial suppression hearing and now on appeal, argues that the tapes of his conversations with Riascos are inadmissiable as Riascos did not voluntarily consent to the electronic recording. In essence, appelant contends that the inherently coercive

nature of arrest and interrogation, when combined with the fact that Riascos was an alien unaccustomed to the U.S. legal system, establishes lack of consent as a matter of law.

[2] After a lengthly pretrial suppression hearing, the U.S. magistrate recommended that the District Court find the recordings were made voluntarily.[2] The District Court adopted the magistrate's findings. The task of this Court is limited in these circumstances to determining whether "there was sufficient evidence on the record to justify the District Court's conclusion that [Riascos] voluntarily consented to the government's interception of the conversation." *United States v. Rangel*, 5 Cir., 1974, 488 F.2d 871, 872. Furthermore, we must accept the trial court's findings of fact on a motion to suppress unless they are clearly erroneous. *United States v. Juarez*, 5 Cir., 1978, 573 F.2d 267, 273. *See also United States v. Griffin*, 5 Cir., 1977, 555 F.2d 1323, 1324.

There is sufficient evidence of record here to justify the conclusion that Riascos consented to the interception of his conversations with Llinas. The record contains no evidence of undue pressure, threats, or inducements. Riascos was advised of his rights and options in both English and Spanish. He had at least twelve hours to ponder his decision to cooperate with the DEA agents' promise to make Riascos' cooperation known to the U.S. attorney and the court, similar promises were held not to be coercion in *United States v. Juarez*, *supra*, 573 F.2d at 278. Raised expectations and hopes for leniency do not amount to coercion. *Id.*

II.

Llinas next contends that inaudible portions of the tape recording of the conversation in the hotel room rendered the tape so unreliable as to be inadmissible at trial. Furthermore, because the original conversation was in Spanish, Llinas contends that the jury's use of an English transcription constitutes reversible error as the translation was inaccurate and the jury, most of the members of which were not Spanish-speaking, could not reconcile alleged discrepancies between the transcription and the recording itself.

[3] Petitioner's argument regarding the inaudibility of the tape is without merit. Tape recordings which are only partially unintelligible are admissible unless those portions are so substantial as to render the recording as a whole untrustworthy. *United States v. Wilson,* 5 Cir., 1978, 578 F.2d 67, 69. The determination as to the trustworthiness of a tape recording is left to the sound discretion of the trial judge. *United States v. Avila,* 5 Cir., 1971, 443 F.2d 792, 795, *cert. denied,* 404 U.S. 944, 92 S.Ct. 295, 30 L.Ed.2d 258. *See also United States v. Wilson, supra,* 578 F.2d 938, 946.

[4] Notwithstanding the inaudible portions of the recording, the transcript as a whole clearly reveals a highly incriminating conversation of a conspiratorial nature. During the conversation appellant sought information from Riascos regarding the condition of the package of cocaine when Riascos picked it up at the airport in Miami, the possibility that customs agents may have opened the package, messages given by the Colombians who sent the cocaine, and a strike by

Colombian customs officers. At other times during the conversation appellant expressed concern about the danger of conducting narcotics transactions over the phone, the difficulties he was experiencing paying his Colombian connections for the cocaine, the fact that he did not have much time to talk, and the existence of 180 federal agents in the Gainesville area. The flow of the conversation is not difficult to follow, and it is quite obvious that the conversation is substantially intelligible. The trial court did not err in admitting the tape. *United States v. Wilson, supra,* 578 F.2d at 69.

[5] Petitioner's final arguments, that the English translation of the tape was inaccurate and that the jury should not have relied on an English translation but on the original tape itself, are also without merit.

If the government's translation was inaccurate, it was petitioner's burden to challenge its accuracy by presenting another translation, so that the jury could choose which version to believe. *United States v. Wilson, supra,* 578 F.2d at 70, "Once we have concluded that the defendants could have challenged specific portions of the Government's transcript or prepared an alternate version, it follows that they cannot be heard to complain on appeal because they failed to take advantage of their trial opportunity."[3]

Llinas cites *United States v. Wilson, supra,* to support his argument that use of an English transcription of the Spanish conversation usurped the jury's fact-finding role. It was, he argues, impossible for the jury to "reconcile the discrepancies in the transcript against the recording itself." *United States v. Wilson, supra,* 578 F.2d at 70.

The answer to this argument is that neither *United States v. Wilson,* nor any other Fifth Circuit case known to the court, dealt with the specific question of English transaltions of foreign language conversations. *United States v. Onori, supra,* for example found transcripts useful in ascertaining the contents of inaudible portions of a tape, and in identifying speakers on a tape. *United States v. Onori, supra,* 535 F.2d at 947. The court in *Wilson* identified the same purposes behind use of a transcript. *United States v. Wilson, supra,* 578 F.2d at 69. The language quoted by Llinas was used by the Court in *Wilson* only as a predicate to explain why the trial court need not verify a transcript before submitting it to the jury.[4].

It should be obvious that there is no requirement that the jury understand the language spoken on a tape recording of a conspiratorial conversation. Otherwise, persons would be free to engage in conspiracies in this country without fear that the government could show direct evidence of the conspiracy, as long as the conspirators addressed each other in a foreign language. *See United States v. Desist,* 2 Cir., 1967, 384 F.2d 889, *aff'd on other grounds,* 394 U.S. 244, 89 S.Ct. 1030, 22 L.Ed.2d 248 (1969).

The proper procedure for the use of transcripts was discussed in *United States v. Onori, supra,* 535 F.2d at 947-49, and is restated in *United States v. Wilson, supra,* 578 F.2d at 69-70 as follows:

> Initially, the district court and the parties should make an effort to produce an "official" or "stipulated" transcript, one which satisfies all sides. If such an "official" transcript cannot be produced, then each side should produce its own version of a transcript or its own version of the disputed portions. In addition, each side may put on evidence supporting the accuracy of its version or challenging the accuracy of the other side's version.

This procedure is well suited to cases such as that before us, where the transcript is an English translation of a foreign language conversation. Such a procedure does not tie a defendant to an "official" transcript prepared by the prosecution, nor does it "usurp" the factfinder's function. If there is a dispute as to the contents of a foreign language recording the burden will lie with respective parties to present transcripts or other evidence to support their version of the conversation.

In the case at hand, appellant had the opportunity and did in fact produce his own translation of the taped conversations with Riascos. This transcript, however, was not presented to the jury because appellant failed to produce an interpreter who could properly authenticate and verify the translation. Appellant cannot complain on appeal that the jury's fact-finding function was usurped when he failed to present evidence which would have aided the jurors in fulfilling that function.

AFFIRMED.

APPENDIX C

Conversation between Riascos and Llinas

1. R No, because that was, that was there; I started to look for things there and this thing got damaged by me and during my coming trip by Eastern, I had to fix it there, the, the box in which they were got a little wet . . . I had to take apart one. Over there . . . How much misery! . . .
2. L . . .
3. R No, for it is that it was split and then I arrived and it . . .
4. L Was it split, how?
5. R Opened, that is split on one side . . .
6. L And, how do you know that they didn't do it at Customs?
7. R Ah, no, because I, I . . .
8. L Are you sure? and, Did you check it before . . .?
9. R Yes of courst
10. L Are your sure that no . . .
11. R Of course
12. L Then that happened on the way, now?
13. R Yes, on the way from Miami to here, listen to me and, and, what happened to you, and? Listen in Bogota that was . . .
14. L More complications over here and with Carlos over there.
15. R But, what does Carlos have to do with this?
16. L Because it was this the great delay.
17. R The delay? Um Humm

18. L Yes, that, in other words, . . . should have arrived two weeks ago, I should have had the money for them on the 28th day of October and it is already November 5th, they are in the inside of . . . they know that there is this delay, that it is entering . . .
19. R Yet
20. L Well, then they have to know that I am not going to have that money by October 28.
21. R Yes, . . . Did you bring me the money?
22. L Yes, listen, but don't tell me anything over the telephone. You harmed me a lot. I prefer that you only tell me that you are here "RAS," and I have that. I still have to return by the house for the money, I return, because there is no reason why to talk absolutely nothing, nothing, nothing, nothing over the telephone . . .
23. R And things here in Gainesville are . . .?
24. L They are bad. Didn't you talk . . .
25. R . . . You are sort of jittery, what have you had problems with police or something?
26. L German, German has called me three times, as a matter of a wrong sender . . . three times he has called, three times to Colombia and he has talked to me about money and how long will it be for the calls . . . and international calls are monitored, and what else, and here the situation is most heavy. I know a quite a few attorneys and all of they have told me to take it with great calm, that there are quite a few telephones, seventy telephones that they ordered to wire tap, imagine my passport indicated death, then, in other words, they told that, then I must think that I am one of those, that is why I tell you that we cannot talk about anything, that is why I when . . . I am going to change this one . . . inclusively let's take this out, we take the ones that have it and I take them away and we leave immediately.

27. L Did you bring me much? . . .
28. R Yes, in order that I take away this thing to pack it, safe than sorry, then . . . willhelp me because I . . . need . . .
29. R . . . I have to go to Miami because I have a business there pending with some people when I return to . . . Miami.
30. L You can go already.
31. R Yes, what times does the next place leave today?
32. L The next, goes, leaves at six-thirty.
33. L Well - - - (pause) take out
34. R Ah?
35. L Help me to take out, because I do not know which ones are the one that have . . .
36. R . . .
37. L Take out, take out, open there and take out only.
38. R . . .
39. L Hey, but I do not know which are the ones that have . . .
40. R But you neither, then?
41. L Do you know which ones are the ones that have?
42. R Yes, of course, the two . . .

43. L Ah, yes . . .
44. L How Long did it take that lady to do it, did she have them ready for you when you told her?
45. R When I arrived?
46. L In other words, did she keep her word?
47. R No, it is that she also had a delay of the devil, and the, how is it called? Listen, in Colombia Customs were on strike or I don't know what!
48. L Ah, yes . . . Because this is what is called evidence and then we need to take out evidence, this is only a "cortacion" (trick or alibi) to take this out right away . . .? I do not want to become you into a paranoiac or anything, but for but that really things wouldn't be so barry (clay, bad) if it weren't because that son of a bitch has called me, three times he calls me, I am so "cabrero" (angry) with him, and he talks to me about money, that when are you going to have the money ready, take, get dressed . . . keep taking out, I know that you are sucked, I am also sucked . . . so tired I am.
49. R And what had you thought to do?
50. L Well to start this immediately . . .
51. R And, and
52. L I will return later for these
53. R But, do you have this negotiated already?
54. L No
55. R No
56. L No, no this can't be negotiated because . . .
57. L Listen, and how do you know . . .
58. R That, that, what amount is it?

59. L What thing?
60. R What amount is all that?
61. L Three, there must be six
62. R That, that, that how much does it cost? Here?
63. L What do you mean how much it costs?
64. R Yes, here all in all
65. L How much an I going to sell it for? 50 and we had almost sent everything . . .
66. R And, taxi . . .
67. L Taxi . . . shit, it is that you are delaying, don't you see how serious the thing is, and I do not remember which ones, almost have, you know? They are pretty . . .
68. R Yes
69. L Take out more and look
70. R And, the . . .
71. L We don't talk until everything is packed.
72. R Do you think to go to Miami today or not?
73. L What?
74. R You have to . . . by Miami someplace?
75. L Well, not now
76. R Yes
77. L I finish this, not really, for what, if I go now
78. R And, and over here, haven't you had problems or anything isn't it true?
79. L What? Problems in what sense?
80. R Problems with someone or something, it is that I see you very nervous
81. L Yes, don't you see what I tell you, that the attorneys told me that seventy wire taps, seventy wire taps, I have the, the my passport that looks like an invitation to an investigation and German Posada calls me three times from

Colombia, three times from Colombia to talk to me that if I have 100, that if I have this, that if I have this other thing, that how is the sale going?

82. R Ah!
83. L Conversations that are such as saying that today I was in . . . they are going to arrive, in other words announcing.
84. R "Aja!"
85. L Then, that is why I am nervous . . . 180 Federal Agents right now here and normally that is no problem to me, you see, but they talk to me like this and I have to proceed as if I am checked, you see.
86. R Ah!
87. L In other words, I am proceeding as if at any time they are going to knock at our door, that is why I want to dispose of this right now, because what remains is nothing, and I have where . . . and well it is the first that I do. Listen. Did you do that?
88. R . . .
89. L And why didn't you . . . before of . . .
90. R What thing?
91. L In fact I would have preferred that you had not told me even where you were over the telephone.
92. R What have we thought to do now.
93. L Shit, work!, What have thought? I have already told you. How many times do you want me to tell you? . . . I am going in "caleto" to that and then I will "fall" here again now we will have . . .

94. R O.K.
95. L There is one left
96. R . . .
97. L . . .
98. R Ah, yes, then O.K. all that . . . Who is the money for?
99. L I am going there . . . immediately to get rid of . . . I'll tell you what you can do is to start repacking these things, the best you can
100. R . . .
101. L Yes and I will take care then to return, I will fall in here without calling you.
102. R You'll leave and return
103. L . . .
104. R Of what
105. R Of two hours
106. L Two hours
107. L O.K.

ARREST, FREEZE

ARREST, FREEZE

APPENDIX D

First voice: . . . of course it is a . . . to look there. I damaged that thing and now . . . I am going to fix it there. We . . . the cardboard box and then one begins to put it together . . .

Second voice: . . . (Unintelligible).

First voice: . . . (Unintelligible). No, there is something wrong . . . then I got there and I . . . that is, split.

Second voice: Then it was split?

First voice: . . . that is, split on one side . . .

Second voice: How do you know if if they did not do it on purpose?

First voice: Oh, because I . . .

Second voice: Are you sure? Did you check it?

First voice: Gracious, yes I am sure.

Second voice: Then ¿how come it gives the way (?) now?

First voice: Yes, to come from Miami here. Listen, what did I tell you? There in Bogota . . . (two talking at the same time–unintelligible) . . . at Carlos' suggestion . . .

Second voice: Yes but, what has Carlos to do with this? Why the big delay?

First voice: The delay?

Second voice: Yes, that is to say, that should have arrived two weeks ago. I should have had the money for them on October 28th. Today is the 5th of November. Do they know about this big delay?

First voice: Yes.

Second voice: They must know that I don't have the money that [was due them] October 28th.
First voice: Yes.
Second voice: Listen, Don't say ANYTHING over the telephone. You did me great harm. I prefer that you only say that you are here. I come and if I have to return to . . . the house . . . well then I return. One must say absolutely nothing, nothing, nothing.
. . . (Unintelligible)
First voice: How are things? . . . the police now . . .
Second voice: They are bad. German has called me three times with the problem that . . .

Galley 2A

all told me that one must be calm; that there are seventy telephones that have been wiretapped. Imagine. May passport shows that . . . Then, that is to say, they told me that I must realize that I am . . . That is why I tell you that one should not speak at all. That is why . . . I am going . . . what is more, we are going to take this out, whatever it has, and I take it with me and leave right away, right now.
First voice: . . . (Unintelligible question).

Second voice: Yes, yes, I am going to take that thing with me to "encaletarla" (colloquialism–unable to translate). Help me . . . because . . .
First voice: I came to stay . . . Miami because I have some pending business with certain people there . . .
Second voice: One cannot say . . .
First voice: Is there a plane today?
Second voice: The next one leaves at 6:30.
(NOISES)
Second voice: Help me pull it out. I don't even know how many it has . . . Pull, pull, talk and pull out. . . .
First voice: . . . (Unintelligible)
Second voice: But I don't know which are the ones . . . Do you know which ones? Did you pick them up?
First voice: Yes.
Second voice: How long does that lady take to do the job? Did she have them ready when you requested? Did she come through?
First voice: No, se took a hell of a time. And the whatyoumacallit . . . In Colombia, Customs were on strike, and whatever.
Second voice: Because this is what is called evidence. We must take the evidence out. This is only a matter of exported goods (?). We must take this out right away. I don't want you to become paranoiac or anything like that, but things would not be so bad if Mr. . . . did not call me. The bastard has called me three times and

has mentioned money, when are we going to have the money ready. Imagine. Start pulling out. I know you are drunk. I am also drunk.

NOISES

First voice: . . . (Unintelligible)

Second voice: . . . Well, you "encaletas" this right away and I shall return for it.

First voice: . . . (Unintelligible question).

Second voice: No, that cannot be done . . .

First voice: . . . Hoy much?

Second voice: . . . What?

First voice: How much is all this?

Second voice: Three. There should be six (?).

First voice: How much is that?

Second voice: What do you mean how much is it? How much am I going to sell it for? Fifty . . . Imagine, we have not talked about that.

First voice: . . . taxi . . .

Second voice: You are taking too long. Don't you realize how serious things are? . . . I don't remember which . . . They are pretty . . .

First voice: Yes.

Second voice: Pull out some more. Let's not talk until everything is "encaletado" (?). . . .

First voice: . . . (Unintelligible question). . . .

First voice: Are you going to go to Miami?

Second voice: What?

First voice: Are you going to go to Miami or any other place?

Second voice: Well, not now. Not until all this is finished. Really, what for? I would like

to go now . . .

First voice: Have you had any problems or anything here?

Second voice: Problems? What kind of problems?

First voice: Problems with something or with someone. You seem nervous.

Second voice: Yes. Haven't I told you the lawyers told me there are 70 wiretaps? My passport is an invitation to an investigation and German Posada calls me three times from Colombia to ask whether I have the hundred (?), whether I have this, whether I have that and how is the sale progressing. Conversations that are as much as to say: Listen . . . they are on their way, or rather, announcing something. That is why I am nervous.

Right now there are 180 Federal agents. As a rule this is no problem, but when they talk like that I must act as if I were under suspicion, don't you see? Rather, I am acting now as if someone were going to knock at the door at any moment. That is why I want to get rid of this right away, because what remains is nothing and I have where to "encaletarlos" . . . that's the first thing I'll do.

Second voice: Listen, why did you do that?

First voice: . . . (Unintelligible).

Second voice: And why didn't you check it before . . . a bad impression . . . very bad.

First voice: What?

Second voice: Really, I would have preferred that they

had not even told me where the telephones were, but ....

First voice: . . . (Unintelligible)

Second voice: Shit, go ahead and work. Haven't you thought about it? How many times do you want me to tell you? I "encaleto" that and later it comes back to you . . .

First voice: O.K.

Second voice: There is one more . . .

First voice: . . . (Unintelligible)

Second voice: Who is that money . . .

First voice: . . . (Unintelligible)

Second voice: I am going to leave right away to get rid of . . . What you can do is repack those things the best you can.

First voice: . . . (Unintelligible)

Second voice: I shall be back. I bring you here without calling (?)

First voice: You will go and return?

Second voice: Yes. In about two hours.

First voice: Two hours? O.K.

Third voice: FREEZE. Put your hands on top of your head. Drop it, drop it, DROP IT. Turn around . . .

? ? ? I don't have anything.

Fourth voice: Move on . . . The other one; both of them. You just freeze. You are under arrest. Don't you move. Do you understand English?

. . . (Voices too far away from the mike).

? ? ? Yes I do . . .

. . .

Fourth voice: I want this one . . . Take him in there . . .

Δ-3 Π #2

APPENDIX E

1e

(1) ↑ Conversation between Blancos and Llanos

Suit missing? (Δ surprise)

(1 R) Yes, because that was, that was there, I started to look for things there and this thing got damaged by me and during my coming trip by Eastern, I had to fix it there, the, the box in which they were got a little wet..... I had to take apart one. Over there..... How much misery!.....

(2 L).....

(3 R) Yes, for it is that it was split and then I arrived and it.....

(4 L) Was it split, how?

(5 R) Opened, that is split on the side.....

(6 L) And, How do you know that they didn't do it at Customs?

(2)

(7 F.) Ah, no, because I, I .....

(8 L) Are you sure? and, Did you check it before ..... ?

(9 R) Yes, of course

(10 L) ~~[illegible]~~ Are you sure that no .....

(11 R) Of course

(12 L) Then that happened on the way, now?

(13 R) Yes, on the way from Miami to here, listen to me and, and, what happened to you, and? Listen in Bogota that was .....

(14 L) More complications over here and with Carlos over there.

(15 R) But, what does Carlos have to do with this?

(16 L) Because it was this the great delay

(3)

(17 R) The delay? Um Hmmm

(18 L) Yes that, in other words, ... should have arrived two weeks ago, I should have had the money for them on the 28th of October and it is already November 5th, they are in the inside of ..... they know that there is this delay, that it is entering.....

(19 R) yes

(20 L) Well, then they have to know that I am not going to have that money by October 28.

(21 R) Yes, ... Did you bring me the money?

(22 L) Yes, listen, but don't tell me anything over the telephone. If you harmed me a lot I prefer that

(4)

(22) L) you only tell me that you are here, "RA" ~~(illegible)~~ hand I have that. I still have to return by the house for the money, I ~~am returning~~ return, because there is no reason why to talk ~~anything~~ absolutely nothing, nothing, nothing, nothing over the telephone.....

(23) R.) And things here in Gainsville are bad?

(24) L) They are bad. Didn't you talk.....

(25) ~~R.....~~ R:..... you are sort of jittery, what, have you had problems with the police or something?

(26) L) German, German has called me three times, as a matter of a wrong address ..... three times has called,

(5)

(27) L three times to Colombia and he has talked to me about money and how long it will it be for the calls ..... and international calls are monitored and what else, and here the situation is most heavy. I know a ~~quite a few~~ attorneys and all of them have told me to take it with great calm, that there are quite a few telephones, seventy telephones that they ordered to wire tap, imagine my passport indicates death, then, in other words, they told me that, then I must think that I am one of those, that is why I tell you that we cannot talk

(6)

21) L) about anything, that is why I
when ..... I am going to change this
one ..... inclusively let's take this out,
we take the ones that have it and
I take them away and we leave
immediately

(27) L) ..... Did you bring me much? .....

(28) L) yes, ~~to take~~ in order that I
take away this thing to pack it,
safe than sorry, then, well help
me because I ..... well .....

(29) R .... I have to go to Miami
because I have a business
there pending with some people
when I return to ... Miami

(30) L You can go already ....

(31) R yes, what time does the next plane
leave today?

(7)

(32) L The next, yes, leaves at six
thirty

(33) L Well ---- (pause) take out

(34) R Ah?

(35) L Help me to take out, because I
do not know which ones are the
ones ~~that~~ That have .....

(36) R .....

(37) L Take out, take out, open this and
take out only.

(38) R .....

(39) L) Hey, but I do not know
which are the ones that have ....

(40) R) But you ~~[illegible]~~ neither, then?

(41) L Do you know which ones are the ones
that have?

(42) R yes, of course, the two .....

(43) L) City ups....

(44) L) How long did it take that lady to do it, did she have them ready for you when you told her?

(45) When I arrived?

(46) (L) In other words, did she keep her word?

(47 R) Yes, it was that she also had a delay of the devil, and the, how is it called? Festes, in Colombia customs were on strike or I don't know what?

(48 L) Yah yes.... Because this is what is called evidence and then we need to take out evidence, this is only a "costumbre" (trick or skill) to take this out right away....?

I do not want to make upset with a

(49 R) [illegible] persons, or any thing but for, but that really things wouldn't be so [illegible] (okay, and) if it weren't because that son of a bitch has called me, three times he calls me, I am so "caliente" (angry) with him, and he talks to me about money, the money, money, take, get dressed ... keep taking out, I know that you are sucked, I am also sucked!!! so tired I am.

(49 R) Could what had you thought to do?

(50) L) Will to start this immediately.

(51) R) Could not

52) L I will return that for them

53) R But, do you know the weather

Tell already?

54) L No

55) R No

56) You, as this can't be updated

because""

57) L Listen, and how do you know?

58) R That, that, what amount will it?

59) L What thing?

60) R What amount will this?

61) L They, they cost is six

62) R That, that, that how much

does it cost? How?

63) L What do you mean how much

it (costs)

64) R Yes, how [illegible]

65) R How much am I going to sell it

for? So can we had almost

sent everything""

66, R) Cindy, Texas""

67 L) Texas. But, at that you

are charging, don't you see how-

persons the things are, and it

do not remember which ones, about

hair, You know? They are pretty""

68) R yes

69) L Take out records look

70) R And, the ...

71) L We don't talk until every-

thing is packed

72 R) ... So you think to go to

Miami today or not?

73) L What?

(12

74) R You have to ... by Hernan Semplan?

75) L Well, not much

76) R Yes

77) L I finish this, actually, for what, if I go over

78) R And, and you have been, haven't you had problems or anything with it isn't it true?

79) L What? Problems in what sense?

80) R Problems with someone or something, it is that I see you very nervous

81) L Yes, that you see what I tell you, that the attorneys told me that twenty six tapes, twenty six tapes, I have the, the

(13

any passport that looks like an invitation to an investigation and Jairon Posada calls me three times from Colombia, three times from Colombia to talk to me that if I have 100, that if I have this, that if I have this other thing, that here is the lady going?

82) R Uh?

83) L Conversations that are such as saying that today I was in ... they are going to arrest, in other words threatening

84) R "¡Cyn!"

85) L Then, that is why I am nervous ... 18 Federal agents

(14)

right now - but normally that
is no problem to me, you see,
but they talk to me like this and
I have to proceed as if I am
shocked, you see.

86) R Ok!

87L) In other words, I am
proceeding as if at any time
they are going to knock at our
door, that is why I want
to dispose of this right away because
so what remains is nothing,
and I have spoken and
well it is the first that I do.
Listen. Did you do that?

(15)

87) L And why disturb you
before of ...?

90) R What thing?

91) L ... In fact I would have
preferred that you had not
told me [illegible] where you
were over the telephone

92 R What have we thought to do now?

93 PL) Work, work!, "What have we
thought? I have already told
you. How many times do you
want me to tell you?" ...
I am going in "cabot") to that
and then I will "fall" sing again
but now we will have ...

94) R OK

95) There is one left

(14) 96 R ...

97 L ...

98 R Oh yes then, O.K. all that.... Who is the money for?

99 L I am going there ... immediately to get rid of ... I'll tell you what you can do is to start repacking these things, the rest you can.

100 R ...

101 L Yes and I will take care then to return, I will talk insure without Calling you.

102 R You'll leave and return

103 L ...

104 R Of what

17 105 R Of two hours

106 L Of. Two Hours

107 O K

Correct, Frazier